

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JOHN EMMETT BARRY, #16957-078

VS.

UNITED STATES OF AMERICA

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CIVIL ACTION NO. 4:13CV184
CRIMINAL ACTION NO. 4:10CR57 (1)

ORDER OF DISMISSAL

This civil action was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the motion to vacate, set aside, or correct sentence should be denied and the case dismissed with prejudice. Movant filed objections. The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of the case, has been presented for consideration. After conducting a *de novo* review of the objections raised by Movant to the Report, the court concludes they are without merit.

The court first notes that most of Movant's objections are simply reassertions of claims raised in his § 2255 motion. However, Movant refers to attachments that are not attached to his objections. In his attempt to show what further investigation may have revealed to prove ineffective assistance of counsel, he states that he conducted his own research of value of homes involved in his mortgage fraud scheme. He asserts these values show that the resulting loss from the fraud scheme is substantially less than the \$21 million noted in the Presentence Report. Even if the court assumed that Movant's assertions are correct, Movant agreed in his plea agreement not to challenge any loss presented in the presentence report. Moreover, Movant fails to show that his plea of guilty was not knowing and voluntary. The Report shows that the District Court found Movant's plea was knowing and voluntary. After considering the plea hearing, the Plea Agreement, the Consent, the Statement

of Facts, and the Findings of Fact, the Magistrate Judge also concluded that Movant's plea was knowing and voluntary. This court agrees.

In cases where the record establishes that the defendant understood the nature of the charge against him and the direct consequences of his act, the rudimentary demands of a fair proceeding and a knowing, voluntary plea are satisfied. *Wright v. United States*, 624 F.2d 557, 561 (5th Cir. 1980); *Diaz v. Martin*, 718 F.2d 1372, 1376-77 (5th Cir. 1983) (if a defendant understands the nature of the charges against him and the consequences of his plea, yet voluntarily chooses to plead guilty, the plea must be upheld on federal review). "A guilty plea, since it admits all the elements of a formal criminal charge, waives all non-jurisdictional defects in the proceedings against a defendant." *Barrientos v. United States*, 668 F.2d 838, 842 (5th Cir. 1982). Movant fails to show he is entitled to relief or that the Report was in error.

Having conducted a *de novo* review of Movant's objections, the court concludes that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the court. It is

ORDERED that the motion to vacate, set aside, or correct sentence is **DENIED** and Movant's case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. Finally, it is

ORDERED that all motions by either party not previously ruled on are hereby **DENIED**.
SIGNED this 16th day of March, 2016.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE